

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION
450 N STREET
SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT
NOVEMBER 21, 2006

ITEM J3 AUTHORIZATION TO PUBLISH
RULES FOR TAX APPEALS

Reported by: Juli Price Jackson
No. CSR 5214

P R E S E N T

For the Board
of Equalization:

John Chiang
Chairman

Claude Parrish
Vice-Chair

Bill Leonard
Member

Betty T. Yee
Acting Member

Marcy Jo Mandel
Appearing for Steve
Westly, State Controller
(per Government Code
Section 7.9)

Gary Evans
Acting Chief, Board
Proceedings Division

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Staff:

Robert Lambert

Bradley Heller

Carole Ruwart

Ian Foster

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5 MR. EVANS: The next item is J3, a request for
6 authorization to publish the five chapters of the Board
7 of Equalization Rules for Tax Appeals,

8 MR. CHIANG: Okay, very good.

9 MR. EVANS: Mr. Lambert will make the
10 presentation.

11 MR. LAMBERT: Mr. Chairman, I am joined at the
12 table here by Mr. Bradley Heller, Mr. Ian Foster, and I
13 believe Miss Carole Ruwart is also approaching.

14 MR. CHIANG: Thank you.

15 MR. LAMBERT: Staff requests permission to
16 begin the A. P. A. rulemaking process for Board of
17 Equalization's Rules for Tax Appeals.

18 Mr. Heller will summarize for the Board Members
19 what's taken place with respect to this proposed rule
20 since this the September 27th meeting.

21 MR. HELLER: Good morning.

22 Since the September 27th meeting, staff held an
23 additional interested parties meeting to discuss
24 communications with Board Members, the holding of --
25 actually, the hearing of confidential taxpayer
26 information during closed session and also any other
27 remaining issues that the interested parties wanted to
28 raise.

1 Since then we've prepared responses to all of
2 the interested parties comments, a cross-reference
3 matrix showing the cross-references between the old
4 Rules of Practice and the new Rules for Tax Appeals --
5 excuse me.

6 And then we have also prepared an index for the
7 overall Rules for Tax Appeals and a flow chart showing
8 all of the different administrative processes contained
9 therein.

10 We've also updated Chapter 2 to clarify the
11 references to Board staff in the different Board
12 subdivisions that are cited throughout that chapter.
13 And also to insure the appropriateness of all
14 delegations of authority in there. And then also
15 revised Chapter 5 to add alternatives for communications
16 with Board Members, which included alternatives
17 recommended by Mr. John Davies, Chief Counsel for the
18 Franchise Tax Board and Lenny Goldberg, and he's with
19 the California Tax Reform Association.

20 And then we also updated -- added alternatives
21 for Section 5000.5033.22 dealing with the closed
22 session. And there is an alternative staff prepared for
23 Miss Yee, as well as an alternative that was recommended
24 by Lenny Goldberg as well

25 MR. CHIANG: Thank you.

26 MR. EVANS: We have four speakers who have
27 signed up.

28 MR. CHIANG: Thank you.

1 MR. EVANS: Lenny Goldberg, Joshua Golka, Bruce
2 Langston and Marty Dakessian.

3 You have three minutes and please introduce
4 yourself.

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6 LENNY GOLDBERG

7 ---o0o---

8 MR. GOLDBERG: Lenny Goldberg, California Tax
9 Reform Association.

10 Thank you very much. I appreciate it that you
11 held over from last time and had the interested parties
12 meeting. I was in a remote part of the world when that
13 happened, so I apologize for missing it, but I also want
14 to say I appreciate the layout this time.

15 The objection that we had last time was that it
16 was all presented as a fait accompli. There were no
17 alternatives for the Board to examine. At this point
18 the issues are out there as alternatives to the Board --
19 for the Board to examine. And I believe that this
20 process should be one that is Board driven, not staff
21 driven on critical decisions.

22 With regard to -- our goal, as an organization,
23 is to increase the transparency, accountability and
24 availability of information to the public of what our
25 elected officials are doing in an adjudicatory capacity.

26 We think -- I actually think that in all of the
27 long debates that have occurred, that making -- that if
28 the Board were to become more open, accountable and

1 transparent in adjudication, it would go a long way
2 towards solving the criticisms of many, including the
3 State bar and many outside national observers to the
4 process in California and who have called for a tax
5 court.

6 I believe that there is a middle ground between
7 that call from many observers of California's system
8 to -- with the BOE continuing to act but in a way that's
9 more open, transparent and accountable and more like --
10 in a court-like manner as elected officials.

11 That said, in that -- in that respect and
12 this -- there are, I would say, fairly broad questions
13 that have gotten raised. The question I asked is if
14 there is not -- if one has to have ex parte
15 communication because there is not enough time at a
16 hearing to really get all of the information laid out on
17 the table, why is it that the Board doesn't change its
18 procedures such that its regulatory and rulemaking
19 functions at occur one day of the month and that several
20 days -- at least several days are set apart for much
21 more extensive hearings which can be had on the record
22 and which information is presented to the record and
23 there is no need, necessarily, to have those behind the
24 scenes, off the record briefings.

25 Now, the Franchise Tax Board proposal speaks a
26 little bit too on the record by saying,

27 "Let us make a record of the off the record
28 discussions or let us have all party meetings

1 so that all information is shared and is
2 publicly available."

3 That is one option. We've supported the
4 Franchise Tax Board option.

5 But I think there can be -- I would urge a
6 rethinking of the process such that this Board sits for
7 a number of days a month in different locations in the
8 State, perhaps -- and I know you do go to Culver City
9 and San Diego from time to time -- to hear -- to take
10 information on the record, have that record available to
11 the public to be scrutinized.

12 When you look through all of the cases you have
13 there are hundreds of millions, if not billions, of
14 dollars at stake every year. And those are taxpayer
15 dollars or tax -- or State dollars, whichever way you
16 look at it.

17 MR. EVANS: Time has expired.

18 MR. GOLDBERG: Time has expired.

19 If I may, I just want to say that with regard
20 to the proposal I made about closed sessions, I think
21 that Member Yee's proposal is probably better
22 articulated, gets to some of the same issues.

23 We were concerned about that language of
24 annoyance and embarrassment to the taxpayer that should
25 really not be an issue with regard to closed sessions.

26 And I would defer to Miss Yee's proposal in
27 that regard.

28 MS. YEE: Thank you.

1
2 JOSHUA P. GOLKA

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4 MR. GOLKA: Good morning, Mr. Chairman and
5 Members of the Board. Joshua Golka with S. E. I. U.
6 Local 1000.

7 We also appreciate the staff having the
8 alternatives for the Board's consideration this morning.
9 We believe that a lot of work went into the proposals
10 that came forth and we're happy to see those before you
11 today.

12 Regarding Section 501485.1, we would agree with
13 Mr. Goldberg and also do support Mr. Davies' proposal.

14 In the alternative, if that is not an
15 acceptable proposal for your alternative, we would like
16 to see this section removed from the rulemaking -- the
17 rules as proposed and dealt with more in depth as we
18 move forward.

19 Regarding Section 5033.2, we also agree with
20 Mr. Goldberg and we would defer to Miss Yee's suggestion
21 and her proposed alternative and we would suggest that
22 you adopt that.

23 Thank you.

24 MR. CHIANG: Thank you.

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1
2 BRUCE LANGSTON

3 ---o0o---

4 MR. LANGSTON: Good morning, I'm Bruce Langston
5 from the Franchise Tax Board legal staff.

6 First, I'd like to compliment the Board staff
7 for their hard work on this regulation, especially
8 Bradley Heller, Ian Foster and Carole Ruwart who worked
9 with us, spent countless hours going over our concerns.

10 And I think we have a good product. I would
11 hate to see it get derailed because of some of the
12 controversial issues.

13 FTB staff really has a neutral position on the
14 communication with Board Members, however, I would point
15 out -- I would agree that this is a new provision, it's
16 not actually -- it's not currently in the regulations.
17 So there is no requirement that you add it to the
18 regulations. So that is also an option, that if there
19 isn't an agreement, simply let the rest of the
20 regulations go forward, which again are -- we worked
21 very hard on and I think are very good -- and maybe
22 reserve this for another time, if that's what you want
23 to do.

24 Thank you.

25 MR. EVANS: Next speaker?

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1 MARTY DEKESSIAN

2 ---o0o---

3 MR. DAKESSIAN: Good morning, my name is Marty
4 Dekassian.

5 I want to take a minute also to speak for
6 someone who was going to be here yesterday, but because
7 of the change in schedule, couldn't be here today --
8 attorney Joe Vinatieri, with the Whittier law firm of
9 Bewley, Lassleben & Miller, wanted to express his
10 support for the staff recommendations with respect to
11 proposed regulations 5000.501.1 relating to
12 communications with the Board Members and relating to
13 the to 5033.2 relating to the discussion of trade
14 secrets in closed session.

15 The individuals who have spoken in opposition
16 to the staff recommendation I would submit,
17 respectfully, don't have California small taxpayers in
18 mind. And that's a shame. I personally feel -- I am a
19 lawyer in the L. A. area, I have a lot of small business
20 clients and I feel as though I've got an obligation to
21 help small taxpayers who have matters before this Board.
22 This is something I learned while working Vice Chair
23 Parrish as his legal counsel for three years. He taught
24 me that every taxpayer counts. I have seen him help the
25 smallest of taxpayers from all walks of life and time
26 and again, when they have had no one else to turn to and
27 when all hope has been lost. Mr. Parrish has made this
28 his legacy.

1 I salute this Board for being committed to the
2 rights of small taxpayers to access their elected
3 representatives.

4 I salute the Chairman, Mr. Chiang, for the
5 efforts he has made to reach out to the small taxpayers
6 through his workshops and clinics and through the
7 efforts he has made to publish Board documents in
8 different languages and otherwise reach out to ethnic
9 taxpayers. Mr. Chiang has worked diligently to include,
10 not disenfranchise his constituents, irrespective of
11 there ethnicity or background.

12 I salute Board Member Leonard for his efforts
13 in putting together the Board's pro bono program,
14 clearly with indigent taxpayers in mind and for reaching
15 out personally to taxpayers -- the smallest of
16 taxpayers -- and devoting the resources of his office to
17 this end.

18 And I also salute Board Member Yee for her
19 efforts in dealing with one of my clients, a nonprofit
20 corporation owned by two African American entrepreneurs
21 who operated a service station in one of the worst
22 neighborhoods in East Oakland and in the hopes of
23 turning that neighborhood around.

24 So, as we sit here in our ivory tower today and
25 listen to the attempt to carve away the most basic of
26 rights set forth in our federal and State constitutions,
27 we ought forget about the working people of this state
28 who will be affected by these drastic changes and all

1 the good work that this current Board has done in their
2 name.

3 I represent quite a few of these working
4 people, many of whom are immigrant businesses. I
5 represent Latino-owned businesses. I represent African
6 American-owned owned businesses; Asian Pacific
7 American-owned businesses and the list goes on.

8 I myself am the child of immigrants and I can
9 tell you that in my experience immigrants are extremely
10 distrustful of government based on the abuse of power
11 and the corruption in the countries from which they
12 emigrated.

13 Oftentimes the first extended involvement
14 with -- these individuals have with government is the
15 United States occurs with the Board of Equalization or
16 the Franchise Tax Board. The ability to contact their
17 elected officials with their problems may, oftentimes,
18 be all they have.

19 Taking that right away will exclude these
20 individuals from government participation.

21 MR. EVANS: Time has expired.

22 MR. DAKESSIAN: Can I have a minute?

23 MR. CHIANG: Marcy? Go ahead.

24 MR. DAKESSIAN: Thank you.

25 Is this what we have to say to our small
26 businesses, to our ethnic taxpayers, to our English as a
27 second language taxpayers -- "Stay away. Get out.
28 Don't talk to us."?

1 Why? Because a bunch of people got together in
2 a room in Sacramento and decided to strip away their
3 rights?

4 We have over one million sales tax permit
5 holders in California. And every Californian is
6 affected by our tax agencies in one form or another.

7 Who speaks for them? Why are we stripping away
8 their rights? I know that those opposed to a
9 democratically elected tax board are thinking -- I know
10 what they're thinking, "Let's carve out an exception for
11 small businesses, let's let small businesses talk to
12 their elected representatives, but not big taxpayers.

13 First of all, this is so discriminatory it's
14 shameful. There are obvious constitutional issues with
15 such approach.

16 But from a practical perspective, how does this
17 work? What is a small taxpayer? Is it measured in
18 terms of employees? Revenues? Profits? Do we require
19 that they submit tax returns to Board staff prior to
20 meeting with Board Members? Is it a lifestyle analysis?
21 Maybe the guy with the Cadillac can't meet with the
22 Board Member, but the guy with the '75 Pacer can?

23 It's just silly. We should move to continue --
24 we should continue to move in the direction of this
25 Board's leadership, not away from it.

26 A vote for alternatives 2 or 3 is a vote
27 against small taxpayers. It's just that simple.

28 And, in conclusion, I want to thank Board staff

1 for all of their hard work and your own staff got it
2 right and you ought to listen to them.

3 MR. CHIANG: Okay, any comments?

4 MS. YEE: Mr. Chairman?

5 MR. CHIANG: Yes.

6 MS. YEE: A couple of comments.

7 I too want to thank the staff for all of the
8 work they put into working on these rules. It's been a
9 challenging, arduous process, but I really appreciate
10 the commitment that the team has had in working through
11 the various options.

12 But I had had an opportunity to actually look
13 at all the chapters in toto over the course of the last
14 several weeks. And I couldn't help but think that a
15 different approach may have been more appropriate -- a
16 fine thing for me to say at this stage of the process.

17 But, let me tell you why. It's -- my office
18 had raised several issues during the course of the
19 process regarding the openness of our proceedings. And I
20 know that staff has been very eager to work on whatever
21 options have been presented to you in terms of how to
22 incorporate them into the proposal that we have before
23 us today.

24 One of them before you today is an alternative
25 proposal that I am suggesting with respect to open
26 meetings or the closure of meetings and let me just say
27 that I don't believe that this alternative is ready to
28 be considered today, the reason being that I don't

1 believe that there has been the thorough analysis that
2 needs to take place with respect to this option. I
3 think -- I have had some feedback with respect to the
4 narrowness of the particular option. And, so, I am not
5 going to be putting it forth today.

6 The -- it didn't benefit from discussion among
7 the Board Members. I wouldn't agree that -- part of the
8 process that I found rather faulty was that many of the
9 options that were presented were incorporated by staff
10 without a thorough discussion by the Board Members and,
11 hopefully, with the guidance of some analysis that would
12 have come before us so we could have that discussion
13 publicly.

14 And it's something I know my office asked for,
15 that I personally had asked for, and because of, I
16 think, a perceived time element associated with the
17 adoption of these rules, I don't believe we ever
18 received.

19 Having said that, I think that one of the goals
20 that I thought that we had been trying to set out for
21 putting revised Rules for Tax Appeals in place and
22 adopted by this Board was really to provide guidance for
23 taxpayers that are going to have business coming before
24 this Board. And in that regard, I do not find the rules
25 to be all that helpful, primarily because it's driven by
26 internal processes rather than really educating the
27 taxpayer with respect to the various stages of the
28 appeals process.

1 And I know that one of the issues that my
2 office and I had raised had to do with at what point
3 does the taxpayer really have an opportunity to know the
4 status of their appeal that is going through the
5 process?

6 And the rules seem to be more organized to at
7 least inform staff internally about where the appeal may
8 be, but certainly not for the taxpayer with respect to
9 the status of his or her appeal.

10 And one of -- I agree with all of the comments,
11 frankly, of the speakers. Let me just say I, as a
12 member of this Board, am not going to be supporting any
13 restriction on communication with Board Members.

14 It is something that I take very seriously and
15 believe that it is something fundamentally important
16 with respect to the ability for me to do my job well on
17 this Board, this access to information.

18 And so I am not going to be open to really
19 looking at hampering my ability to access information in
20 order to make the best decision possible coming before
21 the Board with respect to an appeals matter.

22 Finally, let me just say this, this is a very
23 difficult thing for me to say, given that I know the
24 staff has put a lot of time into this process, but to
25 the extent that it doesn't provide further guidance and
26 clarity for taxpayers that will be bringing matters
27 before the Board, I will not be voting for the rules
28 today.

1 MR. CHIANG: Is there a motion?

2 MS. MANDEL: I had actually a question for --
3 for staff.

4 I'm assuming if the rules go forward that
5 typographical errors and those kinds of things we can
6 take care of in the upcoming informal rulemaking
7 process?

8 I found some typos yesterday -- you probably
9 already found them and I am not going to tell you about
10 them today.

11 MR. HELLER: Staff will absolutely update the
12 rules for any typos that are discovered the actual
13 notice goes out.

14 MS. MANDEL: Okay. i did have a question on --
15 this is on Chapter 4, I guess that's you, Ian, 4052 C 3
16 which talks about -- it's when there's going to be a
17 formal and there is to be some kind of letter to the
18 taxpayer letting them know about the delay and C3, I
19 think, says that part of that letter will say -- remind
20 them that an unpaid tax bears -- that they still --
21 interest continues to accrue.

22 And I understand why somebody would want that
23 in there because taxpayers are, you know, not always up
24 to speed on the fact that they are going to owe even
25 more money as time goes on. And I -- the only concern I
26 have with that is I wouldn't want taxpayers to be misled
27 because we are talking about income tax cases. And if
28 they see that and go, "Oh, my gosh, why don't I pay

1 something toward this?"

2 In the income tax area there is a statute that
3 automatically converts an appeal into a refund claim if
4 there is payments. And there is issues about partial
5 payments and Bruce maybe has an answer for this, but I
6 would be concerned to make sure that any correspondence
7 we send to the taxpayer from this -- from this Board
8 that warns them about -- in an income tax case about if
9 you don't pay there is going to keep being interest,
10 that they not be misled so that when they -- if they
11 turn around and pay their rights, ultimate rights, and
12 appeal rights to court can be adversely impacted if they
13 don't know.

14 So --

15 MR. LANGSTON: I do have one comment and that
16 law was changed last year with California's conformity
17 to the the federal tax deposit rules.

18 MS. MANDEL: For partial payments?

19 MR. LANGSTON: Well, even -- even payments --
20 any payment before the thing -- before the deficiency
21 amount becomes final.

22 So, a taxpayer can make even an excess payment
23 and it will not automatically convert it to a refund
24 claim until the final action on the appeal.

25 MS. MANDEL: That's cool. See, I've been
26 sitting here so long they have changed things, okay.

27 MR. FOSTER: And if they do make full payment,
28 the Board's action is converted to an appeal from a

1 denial of claim for refund and then --

2 MS. MANDEL: And then our correspondence tells
3 them that at the end?

4 MR. FOSTER: Right.

5 MS. MANDEL: Okay, cool.

6 Okay. The only sort of other vaguely not so
7 major, but there was one item in Chapter 5 and I know
8 that we managed to take out during the process all of
9 the things -- or most of the things that talked about
10 how this Board would actually do things because the more
11 we put in regulation of general processes or we used to
12 have all of the Roberts Rules of Order or whatever --
13 just makes it more difficult for the Board.

14 And every time you don't do something exactly
15 as it says in these rules, you are going to open the
16 Board up for having its decisions vacated.

17 There was an item in Chapter 5 that I don't
18 know -- I would kind of prefer to see it deleted. I
19 don't know if somebody had a preference for it or not,
20 but it was in -- on page -- it was in 5024 C, which
21 talked -- which 5024 generally is the provision about
22 formal opinions and concurring or dissenting opinions.
23 And C talked -- is about the Board, once there's been a
24 motion, the Board taking up and reconsidering at that
25 meeting or the next meeting.

26 And it lays out, basically, the rule which is a
27 Roberts Rules of how you do a motion for
28 reconsideration. And it seems that, like the other

1 things that had been stripped out of how the Board
2 actually makes a motion, that that provision struck me
3 as not really necessary or appropriate for regulation.

4 And I'm not sure if somebody wanted it to stay
5 in or what, but --

6 MR. HELLER: Miss Mandel, I think staff's
7 intent in adding that subdivision I think was especially
8 to provide notice to the public that the Board could
9 reopen the vote so that someone didn't leave a meeting
10 thinking that a vote was final and then have it reopened
11 subsequently, later that day.

12 MS. MANDEL: Okay.

13 MR. HELLER: But I think, based on the concerns
14 that I am hearing, I think the staff could maybe limit
15 it just to a previously recorded vote may be reopened at
16 the same meeting or a subsequent meeting end there so
17 that there is no description of the procedure provides
18 the same notice, but doesn't do what we didn't want do
19 the first place, which is limit the Board's discretion
20 to handle their own voting and decisions.

21 Or we can delete it. It was just designed for
22 notice of the Board's authority.

23 MS. MANDEL: I don't know how the other Members
24 feel about it.

25 MS. YEE: I think just to be consistent it
26 probably should just be deleted.

27 MS. MANDEL: These rules are so detailed and
28 complicated now I kind of assume that we might end up

1 seeing our -- you know, we have a little pamphlet that
2 we send them that is in English and not regulatory form
3 and you might wind up revising that, right?

4 MR. LAMBERT: So, we'll meet back here next
5 year with a new version of the rules in plain English?
6 That's very pleasant to contemplate.

7 MR. CHIANG: Any other comments?

8 MR. PARRISH: Yes, Mr. Chairman.

9 MR. CHIANG: Yes, Mr. Parrish?

10 MR. PARRISH: First I want to look at each one
11 of you and thank you and tell each one of you and all of
12 the other people that were involved in this that your
13 efforts are very, very much appreciated.

14 It's sort of like whether or not these rules
15 are ever approved, or if they are approved or modified,
16 I can't thank you enough for your individual efforts.
17 And I hope none of you get discouraged because what you
18 have done and what you are going to do in the future
19 with regards to this effort is at least very, very much
20 appreciated by me.

21 I have been at the Cal Tax breakfasts and over
22 the years have heard various, you know, comments about
23 our operation and why don't we, you know, develop
24 these -- these are very, very important. I know how I
25 would feel sitting there, having gone through all of
26 this trouble and burning the midnight oil and then to
27 think, "Oh, gosh, all my effort was for nothing," but
28 that's not true at all.

1 Even if the rules are never approved, you have
2 done a great service to the agency and the people of
3 California. I am trying to give an example of something
4 that's never used but serves a great purpose -- a life
5 preserver on a ship, let's hope it's never used; a life
6 boat, let's hope it's never used; a weapon, let's hope
7 it's never used; a shield, an inoculation against
8 disease, let's hope it's never used.

9 What you have done is in that vein. You've
10 done a lot of work and I can't thank you enough for your
11 efforts. And I know how you might feel here thinking,
12 "You know, I put all this effort in," and it's sort of
13 like launching a ship or something, will it ever get
14 launched? But what you did is very, very important,
15 even if it never is used because it has already served a
16 great purpose.

17 Secondly -- and I want to be brief -- you know,
18 we talk about transparency and openness and I myself --
19 I can't speak for the other Members -- but I know many
20 of the staff attorneys that represent the State. I know
21 them on a first name basis. I know the states that they
22 came from. I know some about their families. I am fond
23 of many of the representatives that appear here, I kid
24 with them. I am their chum.

25 And so, a taxpayer -- I have known people in
26 the audience here that have represented cases for years,
27 seven years, at least -- and so a taxpayer sits in that
28 spot over there and I have known these people and talked

1 to them and everything I get, everything my staff gets,
2 comes from them. So, the little taxpayer -- maybe if
3 you take the -- there is an individual sitting there and
4 he has an openness, how about having a court reporter
5 with me every time I talk to one of the BOE staff and
6 divulge that to the taxpayer? I mean, what about the
7 taxpayer's right to know and transparency?

8 How do you think a taxpayer feels when he comes
9 before an elected Member -- and we know these attorneys
10 for years and years, I mean, we know where they live, we
11 know their family, we're their buddies, we're chums. We
12 have to be impartial, I know all of the Members are, but
13 imagine -- so all the taxpayer wants -- a brand-new
14 taxpayer that I have never seen before -- he wants to
15 give me a call. He should have a right to talk to me.
16 Because, after all, I know the people sitting on this
17 side of the bench here (indicating), I have known them
18 for years. And so how do you think they feel about
19 disclosure and transparency?

20 The only thing they have is the right to
21 contact one of my deputies or myself. So, that's the
22 answer to transparency and openness. The taxpayer that
23 comes before us with his whole life savings at stake, he
24 doesn't know me, I don't know him. I don't know where
25 he comes from. I try to find out his facts. So, I can
26 imagine how a taxpayer feels sitting in that seat,
27 knowing that I know the staff for years and years and
28 years and probably like them.

1 So, that's an answer to the other side of the
2 coin. Well, with that having been said, this is a
3 democracy and everybody, even with a different opinion,
4 has a right to come forward and that's what everybody's
5 been allowed to do is to say what they think. And then
6 in America we take a vote and whether we win or lose, we
7 just go forward. I have had a number of losing votes,
8 as you all know, and I'm fond of all of you, I don't
9 take it personally. Nobody sitting on the bench should
10 take it personally. You don't win this vote, you win
11 another vote. We go forward and we don't hold grudges.

12 So, I hope none of you hold a grudge because I
13 don't and I know the Members here don't.

14 Thank you, Mr. Chairman, for the opportunity to
15 speak.

16 MR. CHIANG: Very good. Any other comments?

17 MR. LEONARD: Yes, Mr. Chairman, I really would
18 urge the Board to go forward today to publish this and
19 if the Chairman's ready for a motion I'll make it make
20 whenever.

21 I have great respect for Miss Yee and you
22 raised an issue that I hadn't considered and I think
23 it's critical and has to be addressed, but I am -- I'm
24 taken by two aspects of this, one is the whole attempt
25 here was to make our work more transparent to
26 everybody -- taxpayers, practitioners, our staff, the
27 other departments we work with. All these are are a
28 written reflection of what we do. And in some ways

1 that's what's been so difficult to put into writing
2 because what we do is grown culturally, a combination of
3 statute, rules and tradition. And to put some of those
4 in writing -- I have -- my hat's off to you three for
5 the unbelievable work you've done.

6 I would rather put that out there, with all due
7 respect to the gentleman here, I think there's a lot
8 more individuals in California that will be aware of
9 this once published than all of our efforts so far to
10 publicize these rules that will, as we start to work
11 with them, will raise questions -- like you already
12 have.

13 The process to amend them is no more difficult
14 than this process to -- actually, it's a lot less
15 difficult than to bring this body -- at least
16 Mr. Goldberg won't have to carry that big package, it
17 will be a smaller thing that he comes up with.

18 I am going to vote for them and support them
19 strongly. At the same time I am already going to say, I
20 don't think they're perfect. I think you, Miss Yee,
21 have raised a great question.

22 I think Mr. Goldberg is way too conservative on
23 closed session. I don't think I'd ever vote for a
24 closed session. But, again back to our tradition,
25 culture, whatever it is we are trying to do -- and I
26 guess this is the disservice to taxpayers if we don't go
27 forward today, we're still doing all these things.
28 These are our rules of practice -- whether they are

1 adopted in writing or whether we just do them.

2 And I suppose the question you raised,
3 Miss Mandel, I find interesting, there are some things,
4 of course, we can't suspend because the constitution,
5 the statute and the regulations require that. There are
6 other parts of this rule that are kind of Roberts Rules
7 adopted to us that I am -- I would ask for, I guess,
8 legal counsel to look at that that by a majority vote of
9 this Board we could suspend that rule -- whether it's to
10 give taxpayer more time -- some of them are written in
11 there, but others, by implication, I imagine, are
12 subject to suspension.

13 So, the argument of vacating the ruling because
14 we didn't follow the letter of our own rules of practice
15 I don't think is an issue, but I'd like someone to study
16 them.

17 Miss Mandel has raised an interesting point
18 because a lot of these are just guidance, "Taxpayer,
19 this is the way we'd like to do things." We can't
20 anticipate every future contingency. We're trying to
21 give guidance on how we would like to see that happen.
22 And if it doesn't exactly fit, then we suspend the rule
23 to make it fit that situation -- unless there is some
24 prohibition on that that I'm not aware of.

25 Obviously, those that do prohibit it I have
26 already spoken to.

27 So, I'd urge us to go forward today with the
28 full knowledge that we'll be back within 30 or 60 days

1 with proposed amendments to different chapters and
2 sections as we actually try to work and deal with these.

3 Some of these traditions do need to be changed
4 because they're not as transparent as any of us would
5 like -- just the way we have always done it.

6 As Miss Yee points out, I'd like taxpayers to
7 have a much better information stream to know the status
8 of their case and the merits of the arguments of their
9 case.

10 I've continued as I talk to Mr. Goldberg to
11 resist the idea that a lot of our hearing summaries
12 remain confidential so long when we all have them and
13 we're talking publicly about them, but we can't share
14 them with anybody in the audience. I am not sure
15 sometimes even when the taxpayer has access to them, I'd
16 like to speed that up.

17 And I would urge the Board to go forward,
18 it's -- we're actually publishing what we do. And to
19 not publish what we do I think think runs the risk of
20 misleading taxpayers that maybe there aren't any rules
21 or the rules are somehow different than what's proposed
22 before us today, when the intention is that they're
23 merely a reflection of what we do today.

24 And to the extent that these good folks have
25 put into writing what we actually do and we don't like
26 what we see, and we wish to change that or clarify that
27 or amend that, you already made some great suggestions
28 this morning, I think that's healthy and part of the

1 process and will probably be ongoing for decades as new
2 little twists and turns come up in hearings and
3 taxpayers' cases and we want to either put it into the
4 rules to say to others in the future, "If this comes up
5 again, we're going to do it this way," or to simply
6 suspend the rule and say, "This is one time only. We're
7 going to deal with you, but we're really not sending the
8 message to all taxpayers to have a like expectation in
9 the way that rule is applied."

10 So, Mr. Chairman, I am prepared to move it at
11 your discretion.

12 MR. CHIANG: Okay, any other comments?

13 MS. MANDEL: Well, just -- just two because I'm
14 going to ask you to maybe split out part of the package.

15 With respect to the communications with Board
16 Members we currently have a rule in communications with
17 Board Members. The good thing that was done in the
18 staff draft was an addition to our current existing rule
19 that has been in place for ten years to add with
20 specificity what our staff has always said was really in
21 there, was that even lawyers were included within that
22 rule, which for the more conservative lawyers in our
23 experience, is the benefit to add that language to what
24 is our current rules that's been there for ten years.

25 There is a second part to our current rule that
26 simply talks about the nature of proceedings before the
27 Board that's not picked up in these rules, but I think
28 what staff's done by -- by clarifying the longstanding

1 existing rule, at least for that purpose, is valuable.

2 I would -- if these rules went forward, for us
3 to simply drop completely a provision that we've had for
4 ten years doesn't really seem to me to be appropriate.

5 With respect to Chapter 3, which is property
6 tax, we have not supported that previously. We -- the
7 Board is using that process this year, but I think that
8 the jury is still out on it and I am not going to be
9 supportive of that chapter at this point.

10 So, I don't know how intertwined everything is,
11 but -- but to go forward without a vote -- my vote on
12 that chapter.

13 MR. PARRISH: Mr. Chairman, let me --

14 MR. CHIANG: Mr. Parrish?

15 MR. PARRISH: Yes, you know, this is important
16 to have Rules of Practice. However, I would liken it to
17 to our 15,000 page regulations, you know, the books, and
18 we couldn't possibly -- could not have possibly passed
19 the whole thing. So, maybe what Marcy is talking about
20 is taking it piecemeal, looking at it very carefully and
21 doing it chapter by chapter in a very thoughtful way
22 rather than trying to approve the whole, because my
23 normal sentiment is to try approve what we have so far,
24 but it appears there are the typographical errors --

25 MS. MANDEL: Well, typographical -- I am sorry
26 to interrupt, but the typographical errors, what we're
27 doing is it would go to formal rulemaking and
28 typographical errors can certainly be fixed and other

1 things that that are nonsubstantive can be fixed in a
2 public -- in the formal rulemaking to a fifteen-day
3 file, anything that is really substantive would just --
4 would require another notice.

5 I was just -- I wanted -- if there was a motion
6 for the entire package, I would ask that Chapter 3 be
7 subject to a separate motion, but anyway -- sorry, just
8 wanted to make that clear.

9 MR. PARRISH: Thank you.

10 MS. MANDEL: So, I didn't mean to totally cut
11 you off.

12 MR. PARRISH: No, I basically said, I am
13 supportive.

14 I understand there may be some fine tuning.
15 Maybe it's going to be difficult to approve everything
16 at once.

17 I think ultimately we should have rules of
18 practice. You bring up a spectre of, you know, saying,
19 "Well, the Board did not even follow its own rules, then
20 a layman might think, "Well, we can knock out the
21 decision." That's new spectre, that's a new
22 consideration. Of course in the proceedings a lot of
23 times organizations suspend the rules, there is a vote
24 to suspend the rules for a time or whatever. This may
25 add more requirements.

26 So, I think they're good. I think we've -- I
27 think even the constitution has amendments, you
28 understand, as perfect a document as it is, it needs

1 amendments from time to time. So, that might be another
2 route to go.

3 You know and Members know that when we were the
4 Cal tax breakfasts, people have asked questions, you
5 know, and one of the things that they wanted was some
6 rules, some -- a little more structure and I think that
7 may have addressed some legitimate concerns, not
8 problems, but concerns, and so I do think that a lot of
9 progress has been made.

10 And I hope at some point we approve some or all
11 of these or most of them -- but I guess that may be down
12 the road.

13 Thank you, Mr. Chairman.

14 MR. CHIANG: Any other comments? Motion?

15 MR. LEONARD: I will move adoption.

16 MR. CHIANG: We have a motion by Bill.

17 Is there a second?

18 MR. PARRISH: Do we have -- do you want to try
19 motion without one of the paragraphs as mentioned by one
20 of the Members?

21 MR. LEONARD: Oh, I was going to start with the

22 MR. PARRISH: Okay, start with the whole thing.

23 MR. LEONARD: And regroup.

24 MR. PARRISH: And regroup, okay, I will second
25 your motion.

26 MR. CHIANG: Would you take roll, please?

27 MR. EVANS: Mr. Leonard?

28 MR. LEONARD: Aye.

1 MR. EVANS: Mr. Parrish?
2 MR. PARRISH: Aye.
3 MR. EVANS: Miss Mandel?
4 MS. MANDEL: No.
5 MR. EVANS: Miss Yee?
6 MS. YEE: Not voting.
7 MR. EVANS: Mr. Chiang?
8 MR. CHIANG: No. Motion fails.
9 Motion, please?
10 MR. PARRISH: Maybe we need a motion to put
11 this over or something, or table it or do a time
12 specific?
13 MR. CHIANG: Bill, take it up with Marcy?
14 MR. LEONARD: Sure.
15 MS. MANDEL: I am sorry, I had --
16 MR. LEONARD: Move adoption without Chapter 3.
17 MR. PARRISH: Second.
18 MR. CHIANG: Take roll, please?
19 MR. EVANS: Mr. Leonard?
20 MR. LEONARD: Aye.
21 MR. EVANS: Mr. Parrish?
22 MR. PARRISH: Aye.
23 MR. EVANS: Miss Mandel?
24 MS. MANDEL: Aye.
25 MR. EVANS: Miss Yee?
26 MS. YEE: Not voting.
27 MR. EVANS: Mr. Chiang?
28 MR. CHIANG: No.

1 Motion passes.

2 We'll put over Chapter 3.

3 MR. PARRISH: Yes.

4 MR. CHIANG: Okay. Next item?

5 MR. LEONARD: Mr. Chairman?

6 MR. CHIANG: Yes?

7 MR. LEONARD: On Chapter 3 I anticipated
8 waiting until after the December hearings, let me say it
9 now, the experiment of the appeals process that you have
10 raised questions on, I think we should ask our staff to
11 come, maybe at the January meeting, and give us how did
12 it work? How many appeals did we avoid because the
13 appeals conference settled the matter? How many appeals
14 were delayed unduly because we set up the appeals
15 conference matter?

16 To get an update on that, we probably can't do
17 it before January since we -- maybe the end of December
18 meeting but that is probably asking too much of our
19 staff.

20 But that's my intent to do that, to get the
21 kind of update of did it work?

22 MS. MANDEL: Right

23 MR. LEONARD: I know you are asking too.

24 MS. MANDEL: And it would be -- I would
25 encourage people to also talk with the taxpayers' side.

26 MR. LEONARD: Yes.

27 MS. MANDEL: And, you know, even staff
28 separately to see how they felt about the process as

1 compared to the process in prior years of whether they
2 thought there was added value, et cetera.

3 MR. LEONARD: We may want to do a survey or
4 something, there's a lot that didn't show up at all
5 beyond May.

6 MR. LAMBERT: May I ask a question about the
7 process?

8 MR. LEONARD: Yes.

9 MR. LAMBERT: Given that there's been an
10 approval of some, not all of the rules, did you want to
11 go forward with the approved portion of the rules or
12 hold it in abeyance pending the outcome of the remaining
13 chapter?

14 MR. CHIANG: A sense of the Board?

15 MR. LEONARD: Well, as I announced, I guess to
16 clarify the motion, my intent was to publish that. I
17 want greater dissemination.

18 MR. LAMBERT: Okay. Fair enough.

19 MR. LEONARD: Knowing that the Board may
20 reverse itself with some more feedback on this side of
21 the table to say we messed up.

22 So, I guess I should clarify that was the
23 intent of my motion.

24 MS. MANDEL: Yeah, and it seems to me that when
25 you get to this other part about chapter -- like I said,
26 I don't know where there are details in the other
27 chapters that refer to Chapter 3, but by the time you
28 come back -- if you are able to do it at the end of

1 January, you are not going to have the public hearings
2 on stuff until sometime next year. So, it might all
3 meet up.

4 MR. LEONARD: It might meet up, good point.

5 MS. MANDEL: And, if it turns out this that
6 whatever you discover results in you all recommending or
7 the Board deciding something different about Chapter 3,
8 you would make whatever revisions on the other things.
9 It seems like the timing would make things start coming
10 together.

11 MR. LAMBERT: Thank you.

12 MR. CHIANG: Okay. next item?

13 ---o0o---

REPORTER'S CERTIFICATE

State of California)
) ss
County of Sacramento)

I, JULI PRICE JACKSON Hearing Reporter for the
California State Board of Equalization certify that on
NOVEMBER 21, 2006 I recorded verbatim, in shorthand, to
the best of my ability, the proceedings in the
above-entitled hearing; that I transcribed the shorthand
writing into typewriting; and that the preceding pages 1
through 36, constitute a complete and accurate
transcription of the shorthand writing.

Dated: December 4, 2006

JULI PRICE JACKSON
Hearing Reporter